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Daniel David Courson F69760
 R.J. Donovan Correctional Facility
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FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY fm DEPUTY**NUNC PRO TUNC**

AUG 26 2008

United States District Court
 Southern District of California

Daniel David Courson,

Plaintiff,

v.

San Diego Sheriff's Dep. Cochran,

et al,

Defendants.

Civil Case No. 08CV0871-
JAH(LSP)Memorandum of Points and
Authorities in Support
of Appointment of Counsel**Statement of the Case**

This is a civil rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims for the unconstitutional misuse of force, and the delay of medical care for injuries inflicted during the misuse of force, as well as emotional distress as a result of these actions. The plaintiff seeks damages as to all claims.

Statement of Facts

The Complaint alleges that the plaintiff was assaulted by San Diego Sheriff's Deputy Cochran, receiving a significant injury to his right shoulder, resulting in surgical repair, physical therapy, and prolonged pain and suffering. Immediately after the incident, the plaintiff requested medical attention,

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1 which was delayed for several days. Multiple inmate
2 grievance forms were completed by the plaintiff with no response
3 by the defendants or supervisors.

4 Argument

5 **The Court should appoint counsel for the plaintiff.**

6 In deciding whether to appoint counsel for an indigent
7 litigant, the court should consider "the factual complexity of
8 the case, the ability of the indigent to investigate the facts,
9 the existence of conflicting testimony, the ability of the
10 indigent to present his claim and the complexity of the legal
11 issues." Abdullah v. Gunter, 949 F.2d 1032, 1035 (8th Cir. 1991)
12 (citation omitted), cert. denied, 112 S.Ct. 1995 (1992). In
13 addition, courts have suggested that the most important factor
14 is whether the case appears to have merit. Cooper v. A. Sargenti
15 Co., Inc., 877 F.2d 170, 173 (2d Cir. 1989). Each of those
16 factors weighs in favor of appointing counsel in this case.

17 1. **Factual complexity.** The plaintiff alleges that a
18 Sherriff's Deputy physically abused him without any provocation
19 whatsoever, that written administrative remedies went unanswered,
20 and that medical care was delayed after several requests to
21 two defendants. It will probably be necessary to present a
22 medical expert witness or to cross-examine medical witnesses
23 called by the defendants, or both. The presence of medical or
24 other issues requiring expert testimony supports the appointment
25 of counsel. Moore v. Mabus, 976 F.2d 268, 272 (5th Cir. 1992);
26 Jackson v. County of McLean, 953 F.2d 1070, 1073 (7th Cir. 1992);
27 Tucker v. Randall, 948 F.2d 388, 392 (7th Cir. 1991)

28 2. **The plaintiff's ability to investigate.** The plaintiff

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1 is currently an inmate in a level 3 facility in state prison.
2 This case will require considerable discovery concerning
3 deputies' reports and statements about the incident, the
4 history of the deputy with possible prior records of misuse
5 of force, and the plaintiff's medical history. See *Tucker v.*
6 *Dickey*, 613 F.Supp. 1124, 1133-34 (W.D.Wis. 1985) (need for
7 discovery supported appointment of counsel).

8 **3. Conflicting testimony.** The plaintiff's account of his
9 abuse by Deputy Cochran may potentially be conflict with some
10 or all of the statements by the defendant. This aspect of the
11 case will be a credibility contest between the defendants and the
12 plaintiff (and such inmate witnesses). The existence of these
13 anticipated credibility issues supports the appointment of counsel.
14 *Gatson v. Coughlin*, 679 F.Supp. 270, 273 (W.D.N.Y. 1988).

15 **4. The ability of the indigent to present his claim.** The
16 plaintiff has been granted In Forma Pauperis status by the
17 court, and has no legal training, a factor that supports the
18 appointment of counsel. *Whisenant v. Yuam*, 739 F.2d 160, 163
19 (4th Cir. 1984).

20 **5. Legal complexity.** The plaintiff has asked for a jury
21 trial, which requires much greater legal skill than the plaintiff
22 has or can develop. See *Abdullah v. Gunter*, 949 F.2d 1032, 1036
23 (8th Cir. 1991) (citing jury demand as a factor supporting
24 appointment of counsel), cert. denied, 112 S.Ct. 1995 (1992).

25 **6: Merit of the case.** The plaintiff's allegations, if
26 proved, clearly would establish a constitutional violation.
27 The unprovoked and injurious abuse alleged in the complaint clearly
28 states an Eighth Amendment violation. See *Hudson v. McMillian*,

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1 ____U.S.____, 112 S.Ct. 995, 1000 (1992). On its face, then,
2 this is a meritorious case.

3 **Conclusion**

4 For the foregoing reasons, the court should grant the
5 plaintiff's motion and appoint counsel in this case.

6 Sworn under penalty of perjury, this 22nd day August, 2008.
7 Executed at R.J. Donovan Correctional Facility, San Diego, CA,
8 92179.

9 Respectfully submitted,

10 
11 _____
12 Plaintiff

August 22, 2008
Date

13 Daniel David Courson F69760

time: 1:00 pm

14 P.O. Box 799001

15 San Diego, CA 92179-9001
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